THE CONCLUSIVENESS OF STATE JUDGMENTS UNDER THE FULL FAITH AND CREDIT CLAUSE

In the case of *Smithan v. Gray* (1918, Mich.) 168 N. W. 998, the plaintiff's claim was based upon a Pennsylvania judgment. One of the defenses relied upon was that the defendant had never been served with process nor given any notice of the suit. In sustaining the validity of this defense the Michigan Court said:

"When a suit upon a foreign judgment is brought in the courts of this State, that judgment may be impeached for lack of jurisdiction in the foreign court to render the same, irrespective of the recital of jurisdiction contained in the record of judgment."

While agreeing, for reasons hereafter stated, with the actual decision, one may well express doubts of the accuracy of the reasoning upon which it was based. To begin with, a judgment of a sister state is not a "foreign judgment" in the ordinary sense of that term. Under the full faith and credit clause of the United States Constitution and the statute passed by Congress in pursuance thereof, the Pennsylvania judgment created in Michigan a "debt of record" and was entitled to the "same faith and credit" to which it was entitled " by law or usage in the courts of the State from which" it was taken.[1] Nothing but confusion can result from calling such a judgment a "foreign judgment" without explanation or recognition of the fact that it stands in the Michigan courts upon a different footing from judgments rendered by courts in foreign countries. That the judgment even of a sister state may be impeached for "lack of jurisdiction," however, is a well-recognized rule,[2] and it may well be asked in what way as regards the question before the court such a judgment differs from a truly foreign judgment.

The first difference—one which courts who confuse the two seem to forget—is that the faith and credit to be given to the judgments of a foreign country, as distinguished from those of other states, is a matter left for each state to settle as it pleases, whereas the faith and credit to be given to judgments of sister states is fixed by federal and not by state law.[3] The federal law upon the subject requires each

[1] U. S. Const. Art. 4, sec. 1; U. S. Rev. St. sec. 905.

[2] See the authorities discussed below in notes 7 and 8.

[3] In *Chicago Title and Trust Co. v. Smith* (1904) 185 Mass. 363, 70 N. E. 426, in which the suit was based upon an Illinois judgment, the court said: "When the judgment debtor sues here, his defenses *are not regulated by the law of Illinois but by the law of Massachusetts.*" (The italics are the present writer's.) Nowhere in the opinion is there an intimation that there is such a thing as the full faith and credit clause or an act of Congress dealing with the matter. The actual decision in the case is equally extraordinary, as is shown in note 17, *infra*.

state to give to state judgments "such faith and credit as they have by law or usage *in the courts of the State from which they are taken.*"[4] However, in order to be entitled to this faith and credit the alleged judgments must be valid judgments, i. e., they must have been rendered by a court that had "jurisdiction." This word, like so many of our legal words and phrases, is ambiguous. As applied to courts its primary significance is power to take valid action which will stand until reversed by some higher judicial tribunal.[5] With reference to a given person a state court may lack such power for either one or both of two reasons: (1) because facts do not exist which confer upon the State of whose governmental organization the court is a part, "jurisdiction" to alter the defendant's legal relations by state judicial action; (2) because, although these facts do exist, there has been no compliance with the rules of law in force in the particular State in question, which govern the acquisition by the court of "jurisdiction" to alter the defendant's legal relations. If with reference to a given defendant the facts exist necessary to confer "jurisdiction" upon the state generally, and there is a compliance with the rules of law established by the state for the acquisition by the court of jurisdiction over him, any personal judgment that may be rendered will necessarily be valid and entitled to full faith and credit.[6] To determine, therefore, whether an alleged personal judgment of one state is entitled to full faith and credit in other states we must satisfy ourselves of these two things.

Consistently with common-law notions as to "jurisdiction" of an independent state or country, our courts have held that, so far as the entry of a personal judgment is concerned, no one of our states has jurisdiction over a defendant not within its borders unless he is a citizen of the state in question or submits to the jurisdiction.[7] A "judgment" entered against such a defendant who does not submit to the jurisdiction is therefore not entitled to full faith and credit.[8] This is the point actually determined in a large number of the cases commonly cited to establish the proposition that in a suit in one state on the judgment of another state the jurisdiction of the court to render the original judgment may always be inquired into by the court in which the new suit is brought.

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[4] The italics are the present writer's.

[5] See Cook, *The Powers of Courts of Equity* (1915) 15 COLUMBIA L. REV. 106.

[6] Because of limitations of space the discussion is confined to so-called personal judgments.

[7] *Pennoyer v. Neff* (1877) 95 U. S. 714; (1917) 26 YALE LAW JOURNAL, 492. Our common-law notions of "jurisdiction" in this sense are to some extent arbitrary, as well as at variance with ideas prevailing in civil law countries.

[8] *Knowles v. Gaslight and Coke Co.* (1873 U. S.) 19 Wall. 58; *Old Wayne Life Association v. McDonough* (1907) 204 U. S. 8, 27 Sup. Ct. 236.

Carefully to be distinguished from the cases just discussed are those in which the defendant was in the state, or, if out of it, was at least a citizen of it, at the time of the proceedings which terminated in the judgment. As the state had "jurisdiction" over him, the only question is the second one, viz., were the rules for the acquisition *by the court* of jurisdiction complied with? It is at this point, it is believed, that some courts have gone astray. A defendant in a suit in one state on an alleged judgment of another state, although admitting that he was in the state or a citizen thereof at the time of the proceedings which terminated in the "judgment," claims to be entitled to show that he was never personally served. In the view of the present writer, whether he is entitled to do this depends upon whether the rules of law in force in the state in which he was, or of which he was a citizen, made the judgment valid without such service. If they do, then the judgment is valid and entitled in other states to full faith and credit.

Our inquiry then shifts to the question: under what circumstances, if any, do the laws in force in the various states make possible the rendering of a valid personal judgment without personal service? Lack of space forbids the discussion of more than a single class, viz., those in which, although there actually was no service or notice of the suit, the record contains a return by the proper officer, of personal service made.[9] It is the law in many states that the return by the proper officer of personal service within the jurisdiction cannot be attacked, either in the proceeding itself,[10] or collaterally,[11] or even by bill in equity.[12] The defendant's only recourse in such a state is a suit against the sheriff or his bondsmen. This view, which does not represent the law in a large number of states,[13] has been vigorously

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[9] If the record contains no such recital and there was actually no service, where the law in force required it, the alleged "judgment" is of course a nullity both in the state in which rendered and elsewhere. *Price v. Schaeffer* (1894) 161 Pa. 530, 29 Atl. 279.

[10] *Regent Realty Co. v. Armour Packing Co.* (1905) 112 Mo. App. 271, 86 S. W. 880; and cases cited in the monographic note in 124 Am. St. Rep. 757, 758.

[11] *Allurd v. Voller* (1897) 112 Mich. 357, 70 N. W. 1037; and cases cited in 124 Am. St. Rep. 768.

[12] *Taylor v. Lewis* (1829, Ky.) 2 J. J. Marsh. 400; *Smoot v. Judd* (1904) 184 Mo. 508, 83 S. W. 481; *Reiger v. Mullins* (1908) 210 Mo. 563, 109 S. W. 26. In the prevailing and dissenting opinions in the second of these cases the authorities are exhaustively reviewed. See also note in 124 Am. St. Rep. 764. The plaintiff must, of course, be unaware of the falsity of the return.

Compare the similar rule as to the unauthorized appearance of attorney. *Bunton v. Lyford* (1859) 37 N. H. 512. *Contra: Vilas v. Plattsburgh, etc., R.* (1890) 123 N. Y. 440, 25 N. E. 941. See 21 L. R. A. 855.

[13] In many, perhaps most, jurisdictions there is no way in which a defendant who is not served may attack the lack of service, for if he appears in order to raise the question he thereby removes the defect. In a few jurisdictions by express statutory provision, the law seems to be to the contrary. *Dozier v. Lamb* (1877) 59 Ga. 461; *Waring v. McKinley* (1862, N. Y.) 62 Barb. 612. In

denounced as unjust by judges and text writers,[14] but was followed by the Supreme Court of the United States in an early case[15] and later upheld as not violating the "due process of law" provided for by the Fourteenth Amendment.[16] It is the contention of the present writer that inasmuch as a judgment of this kind—rendered against a person subject to the general jurisdiction of the State—is a valid judgment, it must be treated by the courts of other states as such, and given full faith and credit. This has not always been done.[17]

If the foregoing is sound, it follows that if in a suit in one state on a judgment of another state want of service is set up, the proof of such want of service may or may not show "lack of jurisdiction" in the court which rendered the judgment. If the defendant was at the time within the state or was a citizen of it, then, according to the law of many states—although not of all—the court had jurisdiction, i. e. power, to enter an absolutely binding judgment in spite of the lack of service, provided the officer's return of service contained a recital that personal service was had. Such a judgment, obtained in such a state, is therefore entitled in other states to the same faith and credit that it has in the state in which it was rendered.[18] It follows further—con-

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a large number, however, he may raise the question collaterally or obtain relief in equity. *Watson v. Watson* (1827) 6 Conn. 334, in which the court recognized that they were departing from the common law as established in the English decisions. In some, he must show not only lack of service, but also that he has a meritorious defense. *Meyer v. Wilson* (1900) 166 Ind. 651, 76 N. E. 748, and cases in 54 Am. St. Rep. 222; 124 Am. St. Rep. 766. In others, all that need be shown is the lack of service. *Ridgeway v. Bank of Tennessee* (1850, Tenn.) 11 Humph. 525.

[14] See the dissenting opinion in *Smoot v. Judd, supra,* note 12; and the monographic note in 124 Am. St. Rep. 756.

[15] *Walker v. Robbins* (1852, U. S.) 14 How. 584. The doctrine was re-affirmed in *Knox County v. Harshman* (1889) 133 U. S. 152, 10 Sup. Ct. 257. In both cases equitable relief was denied.

[16] *Miedrich v. Lauenstein* (1913) 232 U. S. 236, 34 Sup. Ct. 309. If the defendant was neither a resident nor a citizen of the state at the time of the proceedings, and yet temporarily within the state's borders, it is perhaps doubtful whether the state would be recognized as having jurisdiction to bind him by a recital of service where none in fact was had. It may be that his position would be assimilated to that of the non-citizen who is at the same time a non-resident; nevertheless, the contrary view has arguments to support it. No case involving the question has been found.

[17] In *Chicago Title and Trust Co. v. Smith,* cited *supra,* note 3, the Massachusetts court held that even though it were assumed that the recitals of service in the Illinois judgment there sued upon could not be questioned in Illinois, they could be controverted in the Massachusetts suit and this, even though the recitals of service in a Massachusetts judgment could not be questioned.

[18] *Wilcox v. Kassick* (1851) 2 Mich. 165; *Lapham v. Briggs* (1854) 27 Vt. 26. In both cases the court assumed that the law of the state in which the judgment sued on was rendered made the recital of service conclusive, as was the case at common law.

trary to the assertion of the Michigan court in the passage quoted above—that "recitals [in state judgments] of jurisdiction," i. e., of jurisdictional facts, *are* sometimes conclusive upon the courts of other states. If the defendant was beyond the jurisdiction of the state, they are not conclusive; if he was subject to the state's jurisdiction they may be made conclusive—at least so far as service of process is concerned—if the state law so declares. If so made, they are then entitled to full faith and credit. Consequently, when suit is brought in another state upon such a judgment, before the court can determine whether the defendant may show want of service in order to show lack of jurisdiction, it must first of all inquire into the law of the state rendering the original judgment. If that law makes the recital of service conclusive, it will, in all cases in which the defendant at the time of the alleged service either was in the state concerned or was a citizen thereof, be conclusive in all other states.[19]

W. W. C.

APPEALS FROM JUDGMENTS OF PRIZE COURTS

A recent decision of the Judicial Committee of the Privy Council in *The Stigstad* (1918, P. C.) 35 Times L. R. 176, again emphasizes the anomalous character of the jurisdiction of prize courts.[1] In that case a Norwegian vessel bound from Norway to Rotterdam with iron-ore briquettes belonging to neutrals but alleged to be destined to Germany, was stopped on the high seas under the Order in Council of March 11, 1915, and ordered to discharge her cargo. The Order, admittedly a measure of retaliation against the German war-zone decree, undertook, without establishing a legal blockade, to prohibit all commerce to neutral ports in cargo bound to or from Germany.[2] In the instant case the neutral cargo was sold by consent and a sum allowed for freight, but the claim of the neutral vessel for detention and expenses was dismissed[3] on the ground that (1) with respect to the necessity for reprisals, the court is concluded by the recitals of the Order in Council;

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[19] In the case before the Michigan court the suit was on a Pennsylvania judgment. It happens that that State permits a return of service to be attacked in a suit on a judgment, so that the result reached by the Michigan court was correct. The doctrine announced in the opinion, however, will, if followed, ultimately lead to error in other cases.

[1] See 2 Westlake, *Int. L.*, 289.

[2] The American protest characterizing the Order in Council as illegal may be found in an instruction of the Secretary of State to Ambassador Page, March 30, 1915, Special Suppl. to (1915) 9 AMER. J. INT. L., 116. The Order itself will be found at p. 110.

[3] *The Stigstad* [1916] P. 123, affirmed by the Privy Council, (1918) 35 Times L. R. 176.